

1 ANN K. JOHNSTON (SBN 145022)
2 ajohnston@bergerkahn.com
3 TED A. SMITH (SBN 159986)
tsmith@bergerkahn.com
4 BERGER KAHN
A Law Corporation
5 300 Tamal Plaza, Suite 215
Corte Madera, CA 94925
5 Tel: (415) 891-3321 • Fax: (415) 891-3322

6 Attorneys for Defendant
7 SENTINEL INSURANCE COMPANY, LTD.
8
9

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 BLACK CAT FASHION, INC., a
13 California corporation,

14 Plaintiff,

15 vs.

16 SENTINEL INSURANCE
17 COMPANY, a Connecticut
corporation, and DOES 1 through
50 inclusive,

18 Defendants.

19 } CASE NO.: 2:15-cv-08378-RSWL-JC

20 } **STIPULATED PROTECTIVE
21 ORDER**

22 } [CHANGES MADE TO
23 PARAGRAPH 3]

24 } DATE ACTION FILED: 9/23/2015
25 TRIAL DATE: 3/7/2017

26 1. A. **PURPOSES AND LIMITATIONS**

27 Discovery in this action is likely to involve production of confidential,
28 proprietary, or private information for which special protection from public
disclosure and from use for any purpose other than prosecuting this litigation
may be warranted. Accordingly, the parties have stipulated to and petitioned the
Court to enter the following Stipulated Protective Order. The parties
acknowledge that this Order does not confer blanket protections on all disclosures
or responses to discovery and that the protection it affords from public disclosure
and use extends only to the limited information or items that are entitled to

BERGER KAHN
A Law Corporation
300 Tamal Plaza, Suite 215
Corte Madera, CA 94925

1 confidential treatment under the applicable legal principles. The parties further
 2 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
 3 Order does not entitle them to file confidential information under seal; Civil
 4 Local Rule 79-5 sets forth the procedures that must be followed and the standards
 5 that will be applied when a party seeks permission from the court to file material
 6 under seal.

7 **B. GOOD CAUSE STATEMENT**

8 This action is likely to involve trade secrets, customer and pricing lists
 9 and other valuable research, development, commercial, financial, technical
 10 and/or proprietary information for which special protection from public
 11 disclosure and from use for any purpose other than prosecution of this action is
 12 warranted. Discovery has already been propounded which seeks trade secret,
 13 confidential and proprietary information from Defendant, Plaintiff, and certain
 14 Non-Parties that do business with Plaintiff.

15 Specifically, the scope of the discovery requested by plaintiff encompasses
 16 defendant's Special Investigation Unit's file materials, which contain confidential
 17 and proprietary information regarding defendant's practices and procedures for the
 18 investigation of suspected fraudulent claims. Public disclosure of such information
 19 is contrary to public policy, as set forth in Ins. Code fraud investigation and
 20 reporting statutes, such as sections 1871.4 and 1872 *et seq.*, and CA Fair Claims
 21 Settlement Practices Regulation 2695.7, which provide for the confidentiality of
 22 defendant's fraud investigation practices. Disclosure of such practices and
 23 procedures to the general public would only serve to educate would-be criminals
 24 on how to effectively "beat the system" by revealing the type of facts considered
 25 by defendant in determining whether a claim merits SIU involvement or
 26 investigation, as well as defendant's SIU investigation practices and procedures.

27 Additionally, the scope of discovery that Defendant has requested includes
 28 discovery from Plaintiff, as well as certain Non-Party entities that do business with

1 Plaintiff, that include customer and pricing lists, as well as other confidential
2 business records that contain confidential and proprietary information.

3 Accordingly, to expedite the flow of information, to facilitate the prompt
4 resolution of disputes over confidentiality of discovery materials, to adequately
5 protect information the parties are entitled to keep confidential, to ensure that the
6 parties are permitted reasonable necessary uses of such material in preparation
7 for and in the conduct of trial, to address their handling at the end of the
8 litigation, and serve the ends of justice, a protective order for such information is
9 justified in this matter. It is the intent of the parties that information will not be
10 designated as confidential for tactical reasons and that nothing be so designated
11 without a good faith belief that it has been maintained in a confidential, non-
12 public manner, and there is good cause why it should not be part of the public
13 record of this case.

14

15 2. **DEFINITIONS**

16 2.1 **Action:** *Black Cat Fashion, Inc. v. Sentinel Insurance Company*, US
17 District Court, Central District of California, Case No. 2:15-cv-08378-RSWL-JC.

18 2.2 **Challenging Party:** a Party or Non-Party that challenges the
19 designation of information or items under this Order.

20 2.3 **“CONFIDENTIAL” Information or Items:** information (regardless
21 of how it is generated, stored or maintained) or tangible things that qualify for
22 protection under Federal Rule of Civil Procedure 26(c), and as specified above
23 in the Good Cause Statement.

24 2.4 **Counsel:** Outside Counsel of Record and House Counsel (as well as
25 their support staff).

26 2.5 **Designating Party:** a Party or Non-Party that designates information
27 or items that it produces in disclosures or in responses to discovery as
28 “CONFIDENTIAL.”

1 2.6 Disclosure or Discovery Material: all items or information,
2 regardless of the medium or manner in which it is generated, stored, or
3 maintained (including, among other things, testimony, transcripts, and tangible
4 things), that are produced or generated in disclosures or responses to discovery in
5 this matter.

6 2.7 Expert: a person with specialized knowledge or experience in a
7 matter pertinent to the litigation who has been retained by a Party or its counsel to
8 serve as an expert witness or as a consultant in this Action.

9 2.8 House Counsel: attorneys who are employees of a party to this
10 Action. House Counsel does not include Outside Counsel of Record or any
11 other outside counsel.

12 2.9 Non-Party: any natural person, partnership, corporation, association,
13 or other legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a
15 party to this Action but are retained to represent or advise a party to this Action
16 and have appeared in this Action on behalf of that party or are affiliated with a
17 law firm which has appeared on behalf of that party, and includes support staff.

18 2.11 Party: any party to this Action, including all of its officers,
19 directors, employees, consultants, retained experts, and Outside Counsel of
20 Record (and their support staffs).

21 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 2.13 Professional Vendors: persons or entities that provide litigation
24 support services (e.g., photocopying, videotaping, translating, preparing exhibits
25 or demonstrations, and organizing, storing, or retrieving data in any form or
26 medium) and their employees and subcontractors.

27 2.14 Protected Material: any Disclosure or Discovery Material that is
28 designated as “CONFIDENTIAL.”

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1 2.15 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3
4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only
6 Protected Material (as defined above), but also (1) any information copied or
7 extracted from Protected Material; (2) all copies, excerpts, summaries, or
8 compilations of Protected Material; and (3) any deposition testimony,
9 conversations, or presentations by Parties or their Counsel that might reveal
10 Protected Material, other than during a court hearing or at trial.

11 Any use of Protected Material during a court hearing or at trial shall
12 be governed by the orders of the presiding judge. This Order does not govern the
13 use of Protected Material during a court hearing or at trial.

14
15 4. DURATION

16 Even after final disposition of this litigation, the confidentiality obligations
17 imposed by this Order shall remain in effect until a Designating Party agrees
18 otherwise in writing or a court order otherwise directs. Final disposition shall be
19 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
20 with or without prejudice; and (2) final judgment herein after the completion
21 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
22 Action, including the time limits for filing any motions or applications for
23 extension of time pursuant to applicable law.

24
25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for
27 Protection. Each Party or Non-Party that designates information or items for
28 protection under this Order must take care to limit any such designation to

1 specific material that qualifies under the appropriate standards. The Designating
2 Party must designate for protection only those parts of material, documents,
3 items, or oral or written communications that qualify so that other portions of
4 the material, documents, items, or communications for which protection is not
5 warranted are not swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited.
7 Designations that are shown to be clearly unjustified or that have been made
8 for an improper purpose (e.g., to unnecessarily encumber the case development
9 process or to impose unnecessary expenses and burdens on other parties) may
10 expose the Designating Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that
12 it designated for protection do not qualify for protection, that Designating Party
13 must promptly notify all other Parties that it is withdrawing the inapplicable
14 designation.

15 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
16 this Order (see, e.g., second paragraph of section 5.2(a) below), or as
17 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
18 for protection under this Order must be clearly so designated before the material
19 is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic
22 documents, but excluding transcripts of depositions or other pretrial or trial
23 proceedings), that the Producing Party affix at a minimum, the legend
24 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
25 contains protected material. If only a portion or portions of the material on a
26 page qualifies for protection, the Producing Party also must clearly identify the
27 protected portion(s) (e.g., by making appropriate markings in the margins).

28

1 A Party or Non-Party that makes original documents available for
 2 inspection need not designate them for protection until after the inspecting Party
 3 has indicated which documents it would like copied and produced. During the
 4 inspection and before the designation, all of the material made available for
 5 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party
 6 has identified the documents it wants copied and produced, the Producing Party
 7 must determine which documents, or portions thereof, qualify for protection under
 8 this Order. Then, before producing the specified documents, the Producing Party
 9 must affix the “CONFIDENTIAL legend” to each page that contains Protected
 10 Material. If only a portion or portions of the material on a page qualifies for
 11 protection, the Producing Party also must clearly identify the protected portion(s)
 12 (e.g., by making appropriate markings in the margins).

13 (b) for testimony given in depositions such designation shall be
 14 made on the record whenever possible, but a Designating Party may designate
 15 portions of depositions as containing “CONFIDENTIAL” information after
 16 transcription of the proceedings; the Designating Party shall have until fifteen (15)
 17 days after receipt of the deposition transcript to inform the Receiving Party or
 18 parties to the action of the portions of the transcript designated
 19 “CONFIDENTIAL”.

20 (c) for information produced in some form other than
 21 documentary and for any other tangible items, that the Producing Party affix in a
 22 prominent place on the exterior of the container or containers in which the
 23 information is stored the legend “CONFIDENTIAL.” If only a portion or
 24 portions of the information warrants protection, the Producing Party, to the extent
 25 practicable, shall identify the protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an
 27 inadvertent failure to designate qualified information or items does not, standing
 28 alone, waive the Designating Party’s right to secure protection under this Order for

1 such material. Upon timely correction of a designation, the Receiving Party must
2 make reasonable efforts to assure that the material is treated in accordance with the
3 provisions of this Order.

4 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 **Timing of Challenges.** Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 6.2 **Meet and Confer.** The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37.1 et seq.

10 6.3 The burden of persuasion in any such challenge proceeding shall be
11 on the Designating Party. Frivolous challenges, and those made for an improper
12 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
13 parties) may expose the Challenging Party to sanctions. Unless the
14 Designating Party has waived or withdrawn the confidentiality designation, all
15 parties shall continue to afford the material in question the level of protection
16 to which it is entitled under the Producing Party's designation until the Court
17 rules on the challenge.

18 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1 **Basic Principles.** A Receiving Party may use Protected Material that
20 is disclosed or produced by another Party or by a Non-Party in connection with
21 this Action only for prosecuting, defending, or attempting to settle this Action.
22 Such Protected Material may be disclosed only to the categories of persons and
23 under the conditions described in this Order. When the Action has been
24 terminated, a Receiving Party must comply with the provisions of section 13
25 below (FINAL DISPOSITION).

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A Law Corporation
300 Tamal Plaza, Suite 215
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1 Protected Material must be stored and maintained by a Receiving Party at
2 a location and in a secure manner that ensures that access is limited to the
3 persons authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party,
6 a Receiving Party may disclose any information or item designated
7 “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this
9 Action, as well as employees of said Outside Counsel of Record to whom it
10 is reasonably necessary to disclose the information for this Action;

11 (b) the officers, directors, and employees (including House
12 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
13 this Action;

14 (c) Experts (as defined in this Order) of the Receiving Party to
15 whom disclosure is reasonably necessary for this Action and who have signed
16 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff;

19 (f) professional jury or trial consultants, mock jurors, and
20 Professional Vendors to whom disclosure is reasonably necessary for this Action
21 and who have signed the “Acknowledgment and Agreement to Be Bound”
22 (Exhibit A);

23 (g) the author or recipient of a document containing the
24 information or a custodian or other person who otherwise possessed or knew the
25 information;

26 (h) during their depositions, witnesses, and attorneys for witnesses
27 in the Action, to whom disclosure is reasonably necessary provided: (1) the
28 deposing party requests that the witness sign the form attached as Exhibit A

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
12 PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden

1 and expense of seeking protection in that court of its confidential material and
 2 nothing in these provisions should be construed as authorizing or encouraging a
 3 Receiving Party in this Action to disobey a lawful directive from another court.

4

5 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
 6 **PRODUCED IN THIS LITIGATION**

7 (a) The terms of this Order are applicable to information
 8 produced by a Non-Party in this Action and designated as "CONFIDENTIAL."
 9 Such information produced by Non-Parties in connection with this litigation is
 10 protected by the remedies and relief provided by this Order. Nothing in these
 11 provisions should be construed as prohibiting a Non-Party from seeking additional
 12 protections.

13 (b) In the event that a Party is required, by a valid discovery
 14 request, to produce a Non-Party's confidential information in its possession, and
 15 the Party is subject to an agreement with the Non-Party not to produce the Non-
 16 Party's confidential information, then the Party shall:

17 (1) promptly notify in writing the Requesting Party and the
 18 Non-Party that some or all of the information requested is subject to a
 19 confidentiality agreement with a Non-Party;

20 (2) promptly provide the Non-Party with a copy of the
 21 Stipulated Protective Order in this Action, the relevant discovery request(s), and
 22 a reasonably specific description of the information requested; and

23 (3) make the information requested available for
 24 inspection by the Non-Party, if requested.

25 (c) If the Non-Party fails to seek a protective order from this court
 26 within 14 days of receiving the notice and accompanying information, the
 27 Receiving Party may produce the Non-Party's confidential information
 28 responsive to the discovery request. If the Non-Party timely seeks a protective

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A Law Corporation
 300 Tamal Plaza, Suite 215
 Corle Madera, CA 94925

1 order, the Receiving Party shall not produce any information in its possession or
2 control that is subject to the confidentiality agreement with the Non-Party before
3 a determination by the court. Absent a court order to the contrary, the Non-
4 Party shall bear the burden and expense of seeking protection in this court of its
5 Protected Material.

6

7 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has
9 disclosed Protected Material to any person or in any circumstance not authorized
10 under this Stipulated Protective Order, the Receiving Party must immediately
11 (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use
12 its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
13 inform the person or persons to whom unauthorized disclosures were made of all
14 the terms of this Order, and (d) request such person or persons to execute the
15 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
16 A.

17

18 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR**
19 **OTHERWISE PROTECTED MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other
22 protection, the obligations of the Receiving Parties are those set forth in Federal
23 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
24 whatever procedure may be established in an e-discovery order that provides
25 for production without prior privilege review. Pursuant to Federal Rule of
26 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
27 disclosure of a communication or information covered by the attorney-client
28

BERGER KAHN
A Law Corporation
300 Tamal Plaza, Suite 215
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1 privilege or work product protection, the parties may incorporate their agreement
2 in the stipulated protective order submitted to the court.

3 ///

4 ///

5 12. **MISCELLANEOUS**

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of
7 any person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of
9 this Protective Order no Party waives any right it otherwise would have to
10 object to disclosing or producing any information or item on any ground not
11 addressed in this Stipulated Protective Order. Similarly, no Party waives any
12 right to object on any ground to use in evidence of any of the material covered by
13 this Protective Order.

14 12.3 Filing Protected Material. A Party that seeks to file under seal
15 any Protected Material must comply with Civil Local Rule 79-5. Protected
16 Material may only be filed under seal pursuant to a court order authorizing
17 the sealing of the specific Protected Material at issue. If a Party's request to
18 file Protected Material under seal is denied by the court, then the Receiving Party
19 may file the information in the public record unless otherwise instructed by the
20 court.

21

22 13. **FINAL DISPOSITION**

23 After the final disposition of this Action, as defined in paragraph 4, within
24 60 days of a written request by the Designating Party, each Receiving Party must
25 return all Protected Material to the Producing Party or destroy such material. As
26 used in this subdivision, "all Protected Material" includes all copies, abstracts,
27 compilations, summaries, and any other format reproducing or capturing any
28 of the Protected Material. Whether the Protected Material is returned or

1 destroyed, the Receiving Party must submit a written certification to the
2 Producing Party (and, if not the same person or entity, to the Designating Party)
3 by the 60 day deadline that (1) identifies (by category, where appropriate) all
4 the Protected Material that was returned or destroyed and (2) affirms that the
5 Receiving Party has not retained any copies, abstracts, compilations, summaries
6 or any other format reproducing or capturing any of the Protected Material.
7 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
8 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
9 memoranda, correspondence, deposition and trial exhibits, expert reports,
10 attorney work product, and consultant and expert work product, even if such
11 materials contain Protected Material. Any such archival copies that contain or
12 constitute Protected Material remain subject to this Protective Order as set forth
13 in Section 4 (DURATION).

14
15 14. Any violation of this Order may be punished by any and all
16 appropriate measures including, without limitation, contempt proceedings and/or
17 monetary sanctions.

18
19 IT IS SO ORDERED.

20
21 DATED: May 2, 2015

22
23 /s/
Honorable Jacqueline Chooljian
24 United States Magistrate Judge
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Central District of
California on [date] in the case of *Black Cat Fashion, Inc. v. Sentinel Insurance*
Company, US District Court, Central District of California, Case No. 2:15-cv-
08378-RSWL-JC. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order. I further agree to submit to
the jurisdiction of the United States District Court for the Central District of
California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.
I hereby appoint _____ [print or type full name] of _____
[print or type full address and telephone number] as my
California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.
Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____